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enforce the very rules it opposes—indeed, rules that in other contexts it has even suggested are unconstitutional—by initiating the instant action against Mayday PAC.

CCP's complaint alleges that twelve of Mayday PAC's television and radio advertisements and direct mailings (collectively, "the Communications") contained inadequate disclaimers.³ For the reasons that follow, Mayday PAC requests that no action be taken by the Commission and that this matter be closed.

II. Response

Commission disclaimer rules are designed to "ensure that the voters are fully informed about who is speaking" in a particular public communication."⁴ To satisfy this standard of transparency, disclaimers "must be presented in a clear and conspicuous manner, to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication."⁵ The Communications at issue here—disseminated through television, radio, and direct mail—all clearly met this standard.

A. Mayday PAC's Television Advertisements

CCP first contends that the disclaimers in two television advertisements were deficient. These advertisements contained a written and audio disclaimer: "PAID FOR BY MAYDAY PAC. NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE. MAYDAY.US." There can be no question that the disclaimer was clear and conspicuous, as required by Commission rules: the written disclaimer appeared in large font comprising more than 4 percent of the vertical picture height, it was visible for at least 4 seconds, and it was printed in white text on a black background—a degree of color contrast that distinguished this disclaimer from other text used in the communication.⁶ Likewise, the audio disclaimer was delivered in a clearly spoken manner and also lasted for at least four seconds.⁷ No viewer—including CCP itself—would have been confused as to the identity of the committee that paid for the advertisement, given that the disclaimer contained two references to Mayday PAC and its website, both orally and in writing.

To the extent Mayday PAC's disclaimer language differs from the Commission's regulations, the Commission should find—as it has in myriad similar circumstances—

³ Notably, these twelve Communications represent an exceedingly small percentage of the large volume of communications that Mayday PAC sponsored in the 2014 election cycle.

⁴ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 315 (2010) (quoting *Buckley v. Valeo*, 424 U.S. 1, 76 (1976)).

⁵ 11 C.F.R. § 110.11(c)(1).

⁶ See 11 C.F.R. § 110.11(c)(4)(iii).

⁷ See 11 C.F.R. § 110.11(c).

that such modest variations from the technical requirements do not justify the use of its limited enforcement resources.⁸ There is no serious question that the disclaimers were transparent about the origin and sponsor of the advertisements, and it is precisely this transparency that the Commission's rules are designed to promote.

Furthermore, as the attached affidavit demonstrates, these omissions were inadvertent and occurred despite the good faith efforts of Mayday PAC to ensure compliance with the guidelines. In particular, Mayday PAC sought advice from legal counsel concerning the technical requirements for disclaimers, and repeatedly informed its vendors about these requirements.⁹ Mayday PAC took prompt corrective action upon discovery of the inadvertent omissions in its disclaimers, and has implemented tighter internal control processes to prevent similar errors in the future.¹⁰ Indeed, as CCP grudgingly concedes, the disclaimers in Mayday PAC's subsequent television advertisements were compliant.¹¹

B. Mayday PAC's Radio Advertisements

CCP next challenges the disclaimers in eight radio advertisements sponsored by Mayday PAC. All eight advertisements informed listeners, in a clearly spoken manner: "Paid for by Mayday PAC. Not affiliated with any candidate or campaign." In three of those advertisements, the disclaimers also included the statement: "For more information visit mayday.us." No reasonable listener would have entertained any confusion as to the provenance of these advertisements: each disclaimer expressly informed listeners that the advertisement was paid for by Mayday PAC, and plainly disclaimed coordination with any candidate or campaign.

CCP argues that the phrase "not affiliated with" in the radio disclaimers "may or may not be the same thing as" the phrase "not authorized by."¹² This is an odd position

⁸ See, e.g., MUR 5651 Statement of Reasons ("An agency generally cannot act against each technical violation of the statute it is enforcing.") (citations and quotations omitted); MUR 5595 Statement of Reasons ("Under the circumstances, even if a technical violation of [2 U.S.C. § 441d] could be proven, the matter does not represent a sufficiently serious matter to devote the resources to pursue."); MUR 5523 Statement of Reasons (dismissing alleged disclaimer violation matter as low priority); MUR 6392 General Counsel's Report ("[T]he campaign advertisements at issue contained sufficient identifying information to prevent the public from being misled as to who paid for them, and the violations of 2 U.S.C. 441(d)(c)(2) and 11 C.F.R. 110.11(c)(2)(ii) appear to be technical in nature."); MUR 6278 General Counsel's Report (dismissing alleged disclaimer violation matter where a committee failed to include disclaimers within printed boxes stating that the committee had paid for its website and certain campaign flyers, where "the public could reasonably discern that the Committee produced the information," and where the committee took remedial action).

⁹ See Affidavit at 1-2.

¹⁰ See *id.*

¹¹ See Complaint at 9.

¹² Complaint at 5 & fn. 20.

for an organization that has complained about the constitutional issues raised by regulations that “force” individuals to “engage in government-required speech with many unnecessary words.”¹³ In any case, CCP’s argument has no legal merit.

The law requires communications like Mayday PAC’s to “clearly state” information about who paid for it and to “state that the communication is not authorized by any candidate or candidate’s committee.”¹⁴ Yet, contrary to CCP’s claims, this provision does not require disclaimers to recite the phrase “not authorized by” *verbatim*, as opposed to a substantially identical phrase, such as “not affiliated with.” If Congress had intended to require that exact phrase to be included in every disclaimer, it would have manifested that intent clearly, as it has done elsewhere in the statute by setting off required statements in quotation marks and providing clear direction about the exact words to be used.¹⁵ The language of this provision creates no similar proviso, and the purpose of the rules and very structure of the statutory scheme evince a more flexible standard of disclosure. A materially similar statement—such as Mayday PAC’s disclaimer that it is “not affiliated with” any candidate or campaign—is sufficient to effect a complete disclosure and accomplish the purpose of the rule.

Accordingly, CCP’s semantic argument is unavailing: the letter of the law does not require such specific language, nor does the spirit of the law necessitate it in order to effect a transparent disclosure. Indeed, in the instant case, no reasonable listener outside the confines of a sophistic law school classroom debate would entertain any sincere doubt that the advertisements were not coordinated with any candidate or campaign.

Finally, to the extent that the failure to include a reference to Mayday PAC’s website in five radio advertisements constitutes a violation, Mayday PAC submits that this omission was inadvertent.¹⁶

C. Mayday PAC’s Direct Mailings

CCP also contends that two of Mayday PAC’s direct mailings contained deficient disclaimers. Both mailings contained the following disclaimer:

Paid for by MAYDAY PAC
PO Box 38044

¹³ http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-07-08_Senate-Comments_MA_H-4226_Top-Funder-Disclaimer-And-Contribution-Limits-Increase.pdf

¹⁴ 52 U.S.C. § 30120(a)(3).

¹⁵ Sec 52 U.S.C. § 30120(d)(2) (requiring certain disclaimers to include “the following audio statement: ‘_____ is responsible for the content of this advertising.’ (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor).”).

¹⁶ See Affidavit.

Cambridge, MA 02238

Not affiliated with any candidate or campaign.

CCP relies on the same frivolous argument that it raised about the radio disclaimers, objecting that the phrase "not affiliated with" "does not inform the reader whether or not a candidate or candidate's committee authorized the communication."¹⁷ Again, the law does not require disclaimers to recite this phrase verbatim, and the statement "not affiliated with" plainly accomplishes the purpose of the law by informing readers that Mayday PAC's mailings were produced independently of any candidate or candidate's committee.

CCP also complains that the disclaimers were deficient because they were not "printed in a box set apart from the other contents of the communication."¹⁸ Inasmuch as the omission of a box around the disclaimer in the direct mailings amounts to a violation, Mayday PAC submits that this omission was inadvertent, and occurred despite Mayday PAC's efforts to communicate the disclaimer requirements to its vendors who produced the mailings.¹⁹ The Commission has recognized that enforcement action is unwarranted in cases involving such modest technical disclaimer violations, particularly where the respondent has undertaken prompt remedial measures.²⁰

III. Conclusion

There can be no serious question that the disclaimers in Mayday PAC's Communications prevented anyone—including CCP itself—from discerning that Mayday PAC was the sponsor. Indeed, the essence of CCP's Complaint—that deficiencies it describes as "hypertechnical," "silly," and "pointless" warrant the Commission's time and attention²¹—is disingenuous and a mockery of the Commission's disclosure rules. In light of the circumstances—including that all of Mayday PAC's Communications substantially complied with disclosure rules, and that Mayday PAC has a demonstrated

¹⁷ Complaint at 7.

¹⁸ 52 U.S.C. § 30120(c)(2).

¹⁹ See Affidavit at 2.

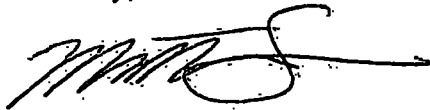
²⁰ See MUR 6365, General Counsel Report (dismissing complaint where committee's yard signs failed to display printed boxes around disclaimers, where the disclaimers otherwise complied with the rules, clearly identified the committee as the funder of the communications, and subsequent campaign communications contained the required boxes); MUR 6348, Statement of Reasons, Vice Chair Hunter, *et al.* ("In numerous . . . low-priority disclaimer matters, the Commission has not subjected respondents to findings and a potential civil liability, even in instances where there was no indication of who paid for the campaign material in question."); MUR 6348, Statement of Reasons, Chair Bauerly, *et al.* ("The Commission has dismissed enforcement matters in cases of omitted disclaimers due to inadvertent error followed by prompt remedial action or in cases in which the public could reasonably discern who was responsible for the advertisement from other information on the materials.")

²¹ Complaint at 8.

commitment to transparency and full disclosure—Mayday PAC submits that the instant matter does not merit the use of the Commission’s limited enforcement resources.²²

For these reasons, Mayday PAC respectfully requests that the Commission dismiss CCP’s frivolous complaint, conserve its limited resources for significant matters, and close this matter.

Sincerely,



Matthew T. Sanderson
Caplin & Drysdale, Chartered



Rachel E. Goldstein
Caplin & Drysdale, Chartered

²² Despite acknowledging the Commission’s standard treatment of disclaimer violations as “low rated” matters not warranting the use of its time and attention, CCP claims that the instant case warrants an exception to that approach. (See Complaint at 9). Yet, none of the supposedly exceptional circumstances CCP cites—such as the fact that Mayday PAC has “over \$10 million in funding,” and that it is “led by the director of a leading academic center on ethics”—distinguish this case as a high-rated priority. (Complaint at 9). CCP in fact betrays the feebleness of its argument by citing precedent, MUR 6348, where the Commission found no violation and dismissed a disclaimer complaint.

BEFORE THE FEDERAL ELECTION COMMISSION
Washington, D.C.

In the Matter of:

Complaint of the Center for Competitive Politics

No. MUR 6905

Affidavit of Szelenia Gray

I, Szelenia Gray, being duly sworn, hereby declare as follows:

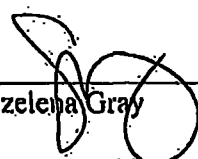
1. My name is Szelenia Gray. I am the Chief Operating Officer of Mayday PAC, and I attest to all of the statements herein as a matter of my first-hand, personal experience in working for Mayday PAC in that capacity.
2. I am aware of, and have reviewed, the complaint that was recently filed with the Federal Election Commission ("FEC") by the Center for Competitive Politics ("CCP").
3. Mayday PAC is an independent expenditure-only PAC created for the purpose of promoting fundamental reform of federal campaign finance laws. Mayday PAC began implementing this mission during the 2014 election cycle, when it sponsored efforts to support pro-campaign finance reform candidates in select Congressional districts, including in Arizona, Iowa, Kansas, Michigan, New Hampshire, North Carolina, and South Dakota.
4. During the 2014 election cycle, Mayday PAC sponsored numerous television, radio, and digital advertisements, as well as direct mailings, in support of select pro-reform candidates.
5. Mayday PAC's institutional commitment to increasing transparency in the election process has been a guiding principle in Mayday PAC's internal operations. In particular, since its inception, Mayday PAC has taken great care to ensure that its operations are consistent with federal campaign finance law.
6. Mayday PAC hired and relied on vendors to produce its public communications who it believed were experienced in complying with federal campaign finance laws, including disclaimer requirements.
7. Mayday PAC's leadership, including myself, emphasized the importance of complying with federal campaign finance laws—including, in particular,

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disclaimer requirements for television and radio advertisements as well as direct mailings—to both its internal staff and its vendors.

8. Prior to Mayday PAC's official launch, it retained legal counsel, which provided Mayday PAC with guidance describing the substantive and formatting requirements for legal disclaimers in such communications.
9. I distributed this guidance to the vendors responsible for producing advertisements and direct mailings.
10. Mayday PAC's leadership—including myself and others—repeatedly reminded vendors of the importance of adhering to the legal guidance concerning disclaimers in television and radio advertisements as well as direct mailings. For example, on multiple occasions I informed the vendor responsible for the direct mailings cited in the Complaint about the correct disclaimer text; likewise, I also provided a detailed memorandum concerning disclaimer requirements to the vendor responsible for the two television advertisements cited in the Complaint.
11. Mayday PAC requested that vendors obtain advance approval from the PAC's internal staff before distributing any public communication, which was a procedure that was not initially followed by vendors in all instances.
12. Mayday PAC is developing a stricter internal control process—including adding additional dedicated compliance staff—to facilitate compliance in the future and prevent any possible future disclaimer errors.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Szelena Gray

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public, this
16th day of January, 2015 at Somerville, Massachusetts.


UPKAR SINGH
Notary Public Signature

My Commission Expires: April 17, 2020

